RNC Corporation Bhd v Kesvaran a/l TP Murugasu

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-03–39 OF 2008
LOW HOP BING, RAUS SHARIF AND ABU SAMAH JJCA
13 MARCH 2009

Civil Procedure — Affidavit — Contents — Validity and legality of liquidation — Never raised in affidavits — Whether challenge made was more of afterthought

Civil Procedure — Execution — Garnishee order — Industrial Court award — Whether garnishee absolute order should not have been granted

Civil Procedure — Res judicata — Estoppel — Same question decided in earlier proceedings — Status and priority of respondent's claim — Issues considered in non-compliance hearing before Industrial Court — Whether liquidators estopped from raising issue — Whether doctrine of estoppel applicable — Whether issues raised different from issues in present case

Companies and Corporations — Scheme of arrangement — Statutory moratorium — Company placed under special administration by Danaharta scheme — Whether scheme binding on all creditors — Industrial Court award — Whether respondent obtained unsecured monetary amount — Whether award should be dealt with by way of proof of debts as part of liquidation — Whether award should rank pari passu with other unsecured creditors

Companies and Corporations — Winding up — Creditors voluntary winding up — Whether in compliance with provisions of the Companies Act 1965

The respondent, the judgment creditor, was the chief executive officer and executive director of RNC. The RNC and its groups of companies faced dire financial difficulties and as part of the cost cutting measures, the company implemented, inter alia, a monthly pay cut of all employees earning more than RM3,500. Accordingly, the respondent's salary was reduced from RM13,000 to RM8,450 to which he protested. On 19 February 1999, he considered himself constructively dismissed by the RNC and his complaint was referred to the Industrial Court. The Industrial Court had, on

A 1 September 2004, held that he had been constructively dismissed without just cause or excuse and awarded him the sum of RM343,333. In the meantime, on 27 July 1999, RNC was placed under special administration by Pengurusan Danaharta Nasional Bhd pursuant to a scheme set out under Pengurusan Danaharta Nasional Act 1998 and the Pengurusan Danaharta
B Nasional (Amendment) Act 2000. On 20 March 2000, the secured and the unsecured creditors of RNC approved the Danaharta Scheme. About eight months after the Industrial Court award, RNC was wound up pursuant to creditor's voluntarily winding up and the liquidators were appointed. The respondent had initiated proceeding under s 56 of the Industrial Relations
C Act 1967 for non-compliance by the RNC of the Industrial Court award. On 5 August 2005, the Industrial Court handed down an enforcement award requiring RNC to pay the respondent the said sum within thirty days. However, RNC failed to comply with the said order. This resulted in him
D filing and obtaining an order to garnish a sum of RM342,333 in RNC's Bumiputra Commerce Bank Bhd's account. The company filed an application to set aside the ex parte order. The application was however, dismissed by the registrar and at the same time the garnishee order was made absolute. Aggrieved with the said decision, the RNC appealed to the judge in
E chambers. The appeal was however, dismissed on the following grounds: (i) that the creditors voluntary liquidation that RNC was placed in was void because there was non-compliance with ss 254 and 260 of the Companies Act 1965 ('the Act') as there was no meeting of the creditors of RNC whether secured or unsecured; and (ii) that at the proceedings before the Industrial
F Court for the non-compliance of the award, the status and priority of the respondent's claim had been fully ventilated. The issue of estoppel therefore applied and RNC could not re-ventilate its claims in the High Court particularly since RNC had not chosen to review that proceeding for non-compliance in the Industrial Court resulting in the award of 5 August
G 2005. Against the said decision, RNC appealed to this court. They contended, inter alia, that as the respondent was not a preferential creditor under the Danaharta Scheme or the Act, therefore, he was not entitled to garnish the sum of RM342,333.

H

Held, allowing the appeal with costs:

(1) Section 41(1)(e) of the Danaharta Act, clearly stipulated that there would be a moratorium against all execution proceedings against a
I company or its assets whilst the company remains in special administration. In the present case, there was no dispute that RNC had been placed under special administration by Danaharta. Hence, a statutory moratorium of all legal proceedings came into effect when RNC was put under special administration (see para 15).

(2) There was in fact a meeting of the members of RNC. Exhibit 'RNC 2' clearly demonstrated that it was resolved by special resolution that RNC could not by reasons of its liabilities continue its business and accordingly be wound up by way of a creditors' voluntary winding up. It was also resolved by an ordinary resolution for the appointment of liquidators of RNC to act jointly and severally for the purpose of the creditors' voluntary winding up. The notice of resolution was lodged with the registrar of companies in accordance with Form II and ss 154(1) and 254(2) of the Act. The fact that the meeting was held and the resolution passed was accordingly advertised. Based on the above, there was no merit on the argument that there had been non-compliance of the provisions of the Act (see para 22).

(3) Moreover, the assertion by the respondent that RNC's winding up was invalid or in contravention of the Act was not put on record as an issue to be tried, nor raised in any of the affidavits filed by the respondent. It was only raised at the submission stage. Thus, the challenge made by him was more of an afterthought. Obviously, it should not be considered as RNC was not afforded the opportunity to proffer evidence to rebut the same (see para 23).

(4) The doctrine of estoppel had no application in this case. The issues that were considered in the non-compliance hearing before the Industrial Court were different from the issues in the present case. Hence, the respondent's reliance on issue of estoppel was unfounded as the status and priority of his claims were not decided in the non-compliance proceedings (see paras 24–25).

[Bahasa Malaysia summary

Responden, pemiutang penghakiman, adalah seorang ketua pegawai eksekutif dan pengarah eksekutif RNC. RNC dan kumpulan syarikatnya mengalami kesulitan kewangan yang sangat teruk dan sebagai sebahagian daripada langkah-langkah pemotongan kos, syarikat telah melaksanakan, antara lain, pemotongan bayaran bulanan kepada semua pekerja yang memperolehi gaji lebih daripada RM3,500. Seterusnya, gaji responden telah dikurangkan daripada RM13,000 kepada RM8,450 yang mana beliau menentangnya. Pada 19 Februari 1999, beliau menganggap dirinya telah dibuang kerja secara konstruktif oleh RNC dan aduannya telah dirujuk kepada Mahkamah Perusahaan. Mahkamah Perusahaan telah, pada 1 September 2004, memutuskan bahawa beliau telah dibuang kerja secara konstruktif tanpa alasan atau sebab yang adil dan diawardkan sejumlah RM343,333. Pada masa yang sama, pada 27 Julai 1999, RNC telah diletakkan di bawah pentadbiran khas oleh Pengurusan Danaharta Nasional Bhd menurut skim yang ditetapkan di bawah Akta Pengurusan Danaharta

Nasional 1998 dan Akta Pengurusan Danaharta Nasional (Pindaan) 2000. Pada 20 Mac 2000, pemiutang tidak bercagar dan bercagar RNC telah meluluskan Skim Danaharta. Kira-kira lapan bulan selepas award Mahkamah Perusahaan, RNC telah digulungkan menurut penggulungan sukarela pemiutang dan likuidator telahpun dilantik. Responden telah memulakan prosiding di bawah s 56 Akta Perhubungan Perusahaan 1967 kerana ketidakpatuhan oleh RNC kepada award Mahkamah Perusahaan. Pada 5 Ogos 2005, Mahkamah Perusahaan telah membuat perlaksanaan award yang menghendaki RNC membayar kepada responden jumlah tersebut dalam tempoh tiga puluh hari. Walau bagaimanapun, RNC telah gagal mematuhi perintah tersebut. Ini mendorongnya memfailkan dan mendapatkan perintah bagi menggarnis sejumlah RM342,333 dalam akaun RNC di Bumiputra Commerce Bank Bhd. Syarikat telah memfailkan permohonan bagi mengenepikan perintah ex parte. Walau bagaimanapun permohonan tersebut telah ditolak oleh pendaftar dan pada masa yang sama perintah garnisi telahpun dijadikan mutlak. Terkilan dengan keputusan tersebut, RNC telah merayu kepada hakim dalam kamar. Walau bagaimanapun rayuan tersebut telah ditolak atas alasan-alasan berikut: (i) bahawa RNC diletakkan di bawah penyelesaian sukarela pemiutang-pemiutang adalah tidah sah kerana ketidakpatuhan dengan ss 254 dan 260 Akta Syarikat 1965 ('Akta') kerana tiada mesyuarat pemiutang-pemiutang RNC sama ada bercagar ataupun tidak bercagar; dan (ii) bahawa semasa prosiding di hadapan Mahkamah Perusahaan untuk ketidakpatuhan award, status dan keutamaan tuntutan responden telahpun disuarakan. Isu estopel oleh itu terpakai dan RNC tidak boleh menyuarakan semula tuntutannya dalam Mahkamah Tinggi kerana RNC tidak memilih untuk menyemak semula prosiding tersebut dalam Mahkamah Perusahaan yang membawa kepada award pada 5 Ogos 2005. Terhadap keputusan tersebut, RNC merayu kepada mahkamah ini. Mereka mengatakan, antara lain, bahawa memandangkan responden bukanlah pemiutang utama di bawah Skim Danaharta ataupun Akta, oleh itu, beliau tidak layak untuk menggarnis jumlah RM342,333.

Diputuskan, membenarkan rayuan dengan kos:

(1) Seksyen 41(1)(e) Akta Danaharta, secara jelas menyatakan bahawa akan ada moratorium terhadap kesemua prosiding perlaksanaan terhadap syarikat ataupun aset-asetnya semasa syarikat diletakkan dalam pentadbiran khas. Dalam kes sekarang, tiada pertikaian bahawa RNC telah diletakkan di bawah pentadbiran khas oleh Danaharta. Oleh sebab itu, moratorium statutori kesemua prosiding perundangan akan berkuatkuasa apabila RNC diletakkan di bawah pentadbiran khas (lihat perenggan 15).

(2) Sebenarnya terdapat mesyuarat di antara ahli-ahli RNC. Ekshibit 'RNC 2' dengan jelasnya menunjukkan bahawa ia telah meluluskan melalui resolusi khas bahawa RNC atas alasan liabiliti-liabiliti tidak boleh meneruskan perniagaan dan selanjutnya digulungkan melalui penggulungan sukarela pemiutang. Ia juga diluluskan dengan resolusi biasa bagi perlantikan likuidator RNC bagi bertindak secara bersesama dan berasingan bagi tujuan penggulungan sukarela pemiutang. Notis resolusi telah dimasukkan dengan pendaftar syarikat menurut Borang II dan ss 154(1) dan 254(2) Akta. Fakta menunjukkan bahawa mesyuarat telah dibuat dan resolusi telah diluluskan dan diiklankan dengan sewajarnya. Berdasarkan perkara di atas, tiada merit pada pertikaian bahawa terdapat ketidakpatuhan kepada peruntukan-peruntukan Akta (lihat perenggan 22).

(3) Selanjutnya, penegasan oleh responden bahawa penggulungan RNC adalah tidak sah atau melanggar Akta tidak dinyatakan dalam rekod sebagai isu untuk dibicarakan, dan tidak juga dibangkitkan dalam mana-mana afidavit yang difailkan oleh responden. Ia hanya dibangkitkan pada peringkat hujahan. Oleh itu, pertikaian yang dibuat adalah lebih kepada fikiran semula. Jelas sekali, ia tidak seharusnya dipertimbangkan kerana RNC tidak diberikan peluang memberikan bukti bagi menyanggah perkara yang sama (lihat perenggan 23).

(4) Doktrin estoppel tidak terpakai dalam kes ini. Isu-isu yang perlu dipertimbangkan dalam pendengaran ketidakpatuhan di hadapan Mahkamah Perusahaan adalah berbeza dengan isu-isu dalam kes sekarang ini. Oleh sebab itu, kebergantungan responden kepada isu estopel adalah tidak berasas kerana status dan keutamaan tuntutannya tidak diputuskan dalam prosiding ketidakpatuhan (lihat perenggan 24–25).]

Notes

For a case on creditors voluntary winding up, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) para 1026.

For cases on contents of affidavit, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 366–380.

For cases on estoppel, see 2(3) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 6045–6053.

For cases on garnishee order, see 2(2) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 2679–2688.

For cases on scheme of arrangement generally, see 3(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 737–748.

Cases referred to

Koh Siak Poo v Sayang Plantation Bhd [2002] 1 MLJ 65; [2002] 1 CLJ 501, CA (refd)

A *Malayan United Finance Bhd v Noormurni Sdn Bhd* [1988] 1 MLJ 395; [1988] 1 CLJ 190, SC (refd)
TSC Education Sdn Bhd v Kolej Yayasan Pelajaran Mara & Anor [2002] 5 MLJ 577; [2002] 2 CLJ 581, HC (refd)

B **Legislation referred to**
Companies Act 1965 ss 154(1), 176, 254, 254(2), 260, 263, 263(2), Form II
Companies (Winding Up) Rules 1972
Industrial Relations Act 1967 s 56
Pengurusan Danaharta Nasional Berhad Act 1998
C Pengurusan Danaharta Nasional Berhad (Amendment) Act 2000 ss 41(1), 1(e), 46(4), 47(3)
Rules of the High Court 1980 O 49

D **Appeal from**: Application for Execution No 37–59 of 2005 (High Court, Kuala Lumpur)

Lim Chee Wee (Ravneet Kaur with him) (Skrine) for the appellant.
Rishwant Singh (Zul Rafique & Partners) for the respondent.

E

Raus Sharif JCA (delivering judgment of the court):

FACTS

F

[1] The facts of this case are these. The judgment creditor ('Kesvaran') was employed by RNC as senior general manager starting from 24 September 1996. On 23 January 1998 he was promoted to the post of chief executive officer and executive director. He was tasked on to restructure the RNC
G groups of companies to put it in a stronger financial position.

[2] Under his stewardship, RNC on 17 August 1998 obtained a court order under s 176 of the Companies Act 1965. This entitled RNC to a nine months protection period from its creditors. In March 1999, the restraining
H order was further extended for period of nine months.

[3] With the restraining orders, Kesvaran proceeded to embark on a restructuring exercise involving the companies within the group. Despite his effort, RNC and its groups of companies began facing dire financial
I difficulties. RNC put into effect a wide cost cutting programme. On 2 February 1999, the staff were informed that a monthly pay cut will be implemented to all employees earning more than RM3,500. As the result, Kesvaran salary was reduced from RM13,000 to RM8,450. He protested. On 19 February 1999, he considered himself constructively dismissed by RNC.

[4] In the meantime, on 27 July 1999, RNC was placed under special administration by Pengurusan Danaharta Nasional Bhd ('Danaharta') pursuant to a scheme ('Danaharta Scheme') set out under Pengurusan Danaharta Nasional Berhad Act 1998 and the Pengurusan Danaharta Nasional Berhad (Amendment) Act 2000 ('Danaharta Act'). On 20 March 2000, the secured and the unsecured creditors of RNC approved the Danaharta Scheme.

[5] While this was going on, Kesvaran's complaint of constructive dismissal was referred to the Industrial Court. The Industrial Court, on 1 September 2004 held that Kesvaran had been constructively dismissed without just cause or excuse. Kesvaran was awarded the sum of RM343,333 ('award') comprising of the following amounts:

(a) backwages RM312,000; and

(b) compensation in lieu of reinstatement RM30,333.

[6] About eight months after the award, RNC was wound up pursuant to creditor's voluntarily winding up. It happened on 20 May 2005. Dato' Abu Hanifah bin Noordin and Vincent Chew Cheong Eu were appointed to act jointly and severally as the liquidators of RNC.

[7] Kesvaran on his part then initiated proceedings under s 56 of the Industrial Relations Act 1967 for non-compliance of the Industrial Court award by RNC. On 5 August 2005, the Industrial Court handed down an enforcement award requiring RNC to pay Kesvaran within thirty days. RNC failed to comply. This resulted in Kesvaran, on 5 January 2006 filing a garnishment application in the High Court to garnish RM342,333 in RNC's Bumiputra Commerce Bank Bhd's ('BCB') account.

[8] On 16 February 2006, the registrar of the High Court on an ex parte basis, granted:

(a) leave pursuant to s 263(2) of the Companies Act 1965 for Kesvaran to proceed and/or commence legal action against RNC; and

(b) an order pursuant to O 49 of the Rules of the High Court 1980 requiring RNC and/or Bumiputra-Commerce Bank Bhd ('BCB') to show cause why Kesvaran should not be allowed to garnish RNC's monies held with BCB.

[9] On 20 March 2006, RNC filed a summons in chambers to set aside the ex parte orders. On 19 June 2006, RNC's application was dismissed by the registrar and at the same time ordered the garnishee order to be made absolute.

[10] Aggrieved with the said decisions, RNC filed two notices of appeal to the judge in chambers. On 24 January 2008, the learned High Court judge dismissed both appeals. Hence this appeal.

DECISION OF THE HIGH COURT

[11] The High Court in dismissing RNC's appeals basically held:

(i) the creditors voluntary liquidation that RNC was placed in was void because there was non-compliance with ss 254 and 260 of the Companies Act 1965 as there was no meeting of the creditors of RNC whether secured or unsecured;

(ii) at the proceedings before the Industrial Court for the non-compliance of the award dated 1 September 2004, the status and priority of Kesvaran's claim had been fully ventilated. The issue of estoppel therefore applies and RNC could not re-ventilate its claims in the High Court particularly since RNC has not chosen to review that proceedings for non-compliance in the Industrial Court resulting in the award of 5 August 2005.

FINDINGS

(i) *The validity of the creditor's voluntary winding up*

[12] The entire basis of RNC's appeal is that Kesvaran is an unsecured creditor and is therefore not entitled to garnish the sum of RM342,333 as Kesvaran is not a preferential creditor under the Danaharta Scheme or the Companies Act 1965. Thus, Kesvaran would not be entitled to any preferential treatment above other unsecured creditors of RNC.

[13] Kesvaran on the other hand contended that the actions of the Special Administrators pursuant to s 47(3) of the Danaharta Act did not amount to liquidation of RNC as envisaged by the Companies Act 1965. According to Kesvaran, the relevant provisions of the Companies Act 1965 had not been complied with and as such the liquidation of RNC was invalid, void and of no effect.

[14] The learned High Court judge agreed with Kesvaran. With respect, I hold otherwise. In the present case, one has to appreciate the implications of the special administration under the Danaharta Act and the significance of the Danaharta Scheme. Under s 41(1) of the Danaharta Act, there is a statutory moratorium of all legal proceedings against a company which is placed under special administration by Danaharta. The section reads as follows:

41 Effect of appointment of Special Administrator

(1) Subject to subsection (6), on the appointment of the Special Administrator, a moratorium shall take effect during which —

...

(e) *no proceedings and no execution or other legal process may be commenced or continued with, and no distress may be levied, against the affected person or its assets except with the prior written consent of the Corporation*;

...

(6) Nothing in this section shall prevent any civil or criminal proceedings from being instituted or continued by any regulatory body under any written law against the affected person.

[15] Section 41(1)(e) of the Danaharta Act, clearly stipulates that there would be a moratorium against all execution proceedings against a company or its assets whilst the company remains in special administration. In the present case, there is no dispute that RNC had been placed under special administration by Danaharta. Hence, a statutory moratorium of all legal proceedings came into effect when RNC was put under special administration.

[16] Further, we have s 46(4) of the Danaharta Act which reads as follows:

46 Secured Creditors' Meeting

(1) The Special Administrator shall, after the approval of the proposal by the Corporation, send by prepaid registered post or in such manner prescribed under this Act to the last known address of the affected person and each of the secured creditors of the affected person known to the Special Administrator.

...

(4) If —

(a) a majority in value of the secured creditors, present and voting, either in person or by proxy, at the meeting approves the proposal; or

(b) there are no secured creditors of the affected person known to the Special Administrator and the Corporation approves the proposal under subsection 45(2),

the proposal, including the proposal as it may subsequently be modified under section 48, *shall be binding on the affected person, all members and creditors of the affected person and any other person affected by the proposal, whether or not the person had knowledge or notice of the proposal.*

[17] Section 46(4) of Danaharta Act clearly provides that upon approval of the Danaharta Scheme by the secured creditors of RNC, the Danaharta Scheme becomes binding on amongst others RNC's creditors. In the present case, the secured creditors had approved the Danaharta Scheme. In relation to the distribution to RNC's creditors, the Danaharta Scheme provided amongst others that:

(a) RNC's creditors, one of which is Kesvaran, would firstly receive redeemable convertible unsecured loan stocks ('RCULS') issued by Aliran Ihsan Resources Bhd ('AIRB') on a pro-rata basis as part settlement of the debts due to them; and

(b) thereafter the balance of any debt still owing to RNC's creditors would be paid in pari passu in liquidation according to the Companies Act 1965 and Companies (Winding Up) Rules 1972.

[18] Based on the facts and clear provisions of the law, I am of the view that the leave order should not have been granted. My reasons are these:

(i) the relief sought by Kesvaran which is to obtain an unsecured monetary amount should be dealt with by way of proof of debts as part of the liquidation of RNC;

(ii) the fact that Kesvaran has an award granted by the Industrial Court should not entitle him to the first cut of the assets of RNC over and above the other creditors;

(iii) Kesvaran's unsecured monetary claim should rank pari passu ie equally with the other unsecured creditors;

(iv) it would create a precedent for the creditors of RNC to proceed with their claim in the court, ignoring the terms of the Danaharta Scheme which would consequently hamper the expeditious discharge and performance of the duties and functions of the liquidators and further reduce the assets available for distribution to the general body of creditors. It would undermine the Danaharta Scheme and belittle the purpose of Danaharta Act. All creditors, including Kesvaran and shareholders are bound by the Danaharta Scheme and therefore Kesvaran should be paid in accordance to the terms of the Danaharta Scheme.

(v) it would give Kesvaran an advantage over the other creditors in the winding up of RNC, thereby causing prejudice to the other creditors.

[19] It is for the same reason, the garnishee absolute order should not have been granted.

[20] It was argued before us by learned counsel representing Kesvaran, that there has been non-compliance of ss 254 and 260 of the Companies Act 1965 resulting in the purported liquidation of RNC as invalid, void and of no effect. With utmost respect, the argument is without merit because it overlooks the fact that RNC was invalidly wound up was not part of Kesvaran's case. On the contrary, Kesvaran indirectly admitted that RNC was in liquidation. In his summons seeking leave of the court to commence legal action against RNC pursuant to s 263(2) of the Companies Act 1965, in para 5 of his supporting affidavit thereto, he stated that:

> Saya … sesungguhnya mempercayai bahawa oleh kerana Penghutang Penghakiman kini berada dalam liquidasi, kebenaran Mahkamah Mulia ini dikehendaki bagi memulakan dan meneruskan tindakan ini terhadap Penghutang Penghakiman.

[21] With the above statement, Kesvaran cannot now contend that RNC had been invalidly wound-up. The fact that RNC had been wound up was clearly stated in para 18 of RNC's first affidavit affirmed by Chew Chong Eu dated 20 March 2006 which read as follows:

> 18 On 20.05.2005, a meeting of the creditors of RNC ('Creditors' Meeting') and an extraordinary general meeting of the members of RNC ('EGM') were held and it was resolved thereat inter alia the RNC be wound up voluntarily by its creditors and that Dato' Abu Hanifah bin Noordin and myself would be appointed as the liquidators of RNC. There is now produced and shown to me marked collectively as Exhibit 'RNC-2' a copy of the advertisement of the voluntarily winding up of RNC dated 25.05.2005, the notice of appointment and situation of office of liquidators (Form 72) dated 20.05.2005 and the notice of resolution (Form 11) dated 20.05.2005 duly lodged with the Companies Commission of Malaysia.

[22] The exhibits produced in support of the statement in para 18 above clearly shows that there was in fact a meeting of the members of RNC. Exhibit 'RNC 2' clearly demonstrates that it was resolved by special resolution that RNC cannot by reasons of its liabilities continue its business and accordingly be wound up by way of a creditors' voluntary winding up. It was also resolved by an ordinary resolution that Dato' Abu Hanifah bin Nordin and Mr Chew Eu be appointed as liquidators of RNC to act jointly and severally for the purpose of the creditors' voluntary winding up. The notice of resolution was lodged with the Registrar of Companies in

accordance with Form II and ss 154(1) and 254(2) of the Companies Act 1965. The fact that the meeting was held and the resolution passed was accordingly advertised as found at p 251 of the record of appeal.

[23] Based on the above, there is no merit on the argument by Kesvaran that there has been non-compliance of the provisions of the Companies Act 1965. Moreover, the assertion by Kesvaran that RNC's winding up was invalid or in contravention of the Companies Act was not put on record as an issue to be tried, nor raised in any of the affidavits filed by Kesvaran. It is trite law that parties are bound by their pleadings, and the courts must decide on a pleaded case (see *TSC Education Sdn Bhd v Kolej Yayasan Pelajaran Mara & Anor* [2002] 5 MLJ 577; [2002] 2 CLJ 581, *Koh Siak Poo v Sayang Plantation Bhd* [2002] 1 MLJ 65; [2002] 1 CLJ 501). In the present case, the validility and legality of RNC's liquidation was never raised by Kesvaran. No such challenge was pleaded nor evidence of the same was adduced. It was only raised by Kesvaran at the submission stage. Thus, the challenge made by him was more of an afterthought. Obviously, it should not be considered as RNC was not afforded the opportunity to proffer evidence to rebut the same.

(ii) *Issue of estoppel*

[24] The learned High Court judge held that RNC and their liquidators are estopped from raising the issue on the status and priority of Kesvaran's claim since the issue had already been fully argued in, and decided by the Industrial Court during non-compliance proceedings instituted by Kesvaran. With respect, the doctrine of estoppel has no application in this case. In *Malayan United Finance Bhd v Noormurni Sdn Bhd* [1988] 1 MLJ 395; [1988] 1 CLJ 190, the Supreme Court considered the issue of estoppel and said:

> We agree with the learned judge that 'issue of estoppels' can arise even where a plea of res judicata cannot be established because the causes of action are not the same.
>
> *Halsbury's Laws of England* — 4th Ed, Vol 16 para 1530 succintly sets out the law, which is cited here — under:
>
> > A party is precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even if the objects of the first and second actions are different, the finding on a matter which came 'directly (not collaterally or incidentally) in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusion in a second action between the same parties and their privies. This principle applied whether the point involved in the earlier decision, and as to which the parties are estoppels, is one of fact or one of law, or one of mixed fact and law. *The conditions for the application of the doctrine have been stated as being that: (1) the same question was decided in both proceedings; (2) the judicial decision said to create the estoppels was final; (3) the parties to the*

judicial decision or their parties were the same persons as the parties to the proceedings in which the estoppels is raised or their privies. (Emphasis added.)

[25] From the above authority, it is clear that the doctrine of estoppel only applies when the same question has been decided in the earlier proceedings. In the present case, the Industrial Court had only decided that the special administrator had the cash of RM342,333 to pay Kesvaran but was not willing to do so. Evidently, the issues that were considered in the non-compliance hearing before the Industrial Court were different from the issues in the present case. The issues in the present case are:

(i) whether the special administrators were entitled to and had in fact reclassified Kesvaran as an essential creditor;

(ii) whether Kesvaran should be given priority over all other unsecured creditors of RNC;

(iii) whether leave should be granted to Kesvaran to commence legal proceedings against RNC in liquidation; and

(iv) the ambit of s 263 of the Companies Act, the Danaharta Scheme and the Danaharta Act and how the provision therein may be applied in this matter.

Hence, Kesvaran's reliance on issue of estoppel is unfounded as the status and priority of his claims were not decided in the non-compliance proceedings.

[26] For the aforesaid reasons, I would allow both appeals with costs. The deposit of these appeals must be refunded to RNC.

[27] My learned brothers Low Hop Bing and Abu Samah Nordin JJCA have read this judgment in draft and have agreed to make it the judgment of this court.

Appeals allowed with costs.

Reported by Ashgar Ali Ali Mohamed